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A new challenge to civil liberties

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WASHINGTON -- In this new war on terrorism, the government will probably acquire broader powers to monitor and deport suspected terrorists, and Arab Americans and Muslims especially are concerned their civil liberties could be in jeopardy.

As America girds for a lengthy war, it carries a long history of curtailing civil rights in the pursuit of victory -- from Abraham Lincoln's suspension of habeas corpus, allowing unexplained detentions during the Civil War, to the internment of more than 120,000 Japanese-Americans during World War II.

That history worries Muslim leaders, constitutional scholars and civil-liberties advocates as the Bush administration pushes for broader powers for investigators, such as greater freedom to tap phones and detain suspects.

"Historically, we have always overreacted in times of fear by engaging in guilt-by-association, by targeting whole groups of people as suspect, and only later have we recognized these were overreactions and mistakes," said David Cole, a Georgetown University law professor who has represented Palestinians and others whom the government has tried to deport for alleged ties to terrorists.

"We do much better when the FBI is required to focus on specific criminal activity than when we give it broader brush ability to engage in political spying and guilt by association," Cole said.

Muslim groups in the United States say some of their members already are being questioned by the FBI simply because of their faith.

But FBI Director Robert Mueller said Monday that investigators are questioning only people they believe might have information related to last week's terrorist attacks on the World Trade Center and the Pentagon.

"We do not, have not, will not target people based on their ethnicity. Period," he said.

Ashcroft's assurances

Attorney General John Ashcroft said Monday that civil liberties remain a priority as the administration finalizes a comprehensive package of legislative proposals designed to help battle terrorists. And members of Congress said they will be diligent in making sure requests for broader powers do not infringe on civil liberties.

"The Constitution is not tested in times of peace, but in times of tenseness," said Rep. Mike Honda, D-San

Jose, who was shipped to a Japanese-American internment camp as a child.

Addressing the particular concerns of the Muslim community, President Bush met with a dozen community leaders Monday at the Islamic Center of Washington.

"These acts of violence against innocents violate the fundamental tenets of the Islamic faith. And it's important for my fellow Americans to understand that," Bush said.

Such statements by Bush and other administration officials are comforting. But Muslim leaders and others concerned about civil liberties said the test will be how the government reacts in weeks and months to come.

America's track record on civil liberties during wartime is not good. In his book "All the Laws but One," Supreme Court Chief Justice William Rehnquist wrote, "It is neither desirable nor is it remotely likely that civil liberty will occupy as favored a position in wartime as it does in peacetime. The laws will . . . not be silent in time of war, but they will speak with a somewhat different voice."

Force of paranoia

Robert Rubin, legal director for the Lawyers Committee for Civil Rights in San Francisco, noted that during wartime, paranoia extended beyond politicians to the Supreme Court. It upheld legislation during World War I that curtailed freedom of speech and the press, as well as the 1942 executive order by President Franklin D. Roosevelt that led to the forced evacuation and internment of Japanese-Americans after the attack on Pearl Harbor.

In addition to speaking out against intolerance, Rubin said, "the political leadership also needs to appreciate that in granting expansive powers to law enforcement it has to be sensitive to the historical reality that those powers are used disproportionately against minorities and other disenfranchised people."

Civil libertarians worry that the risk extends beyond the Arab American community or any other group that may be targeted during a protracted war. The American Civil Liberties Union has issued a statement urging Congress not to rush legislation that "threatens privacy rights," such as loosening limits on wiretapping.

Ashcroft said the changes to wiretapping restrictions are needed because current laws hamper authorities by forcing them to seek permission for wiretaps, one phone line at a time.

"Given the nature and availability of literally disposable telephones in modern society, we need to be able to have the court authority to monitor not the phone, but the telephone communications of a person and to have authority to stay with that person," he said.

But Cole said the government has been seeking that power for years and if granted, it would likely lead to many unrelated private conversations being monitored.

Cole and other civil-liberties experts point to the 1996 "Anti-terrorism and Effective Death Penalty Act" as an example of a law arising out of crisis that infringed on people's rights. Congress passed the law after the first World Trade Center bombing in 1993, allowing immigration officials to arrest, detain and deport suspected terrorists without revealing the evidence to the suspects and their lawyers.

The law recently has been highly criticized as unconstitutional, and a bipartisan coalition in Congress has been working to change it.

Pressure on Congress

But Mark Graber, a professor of government and politics at the University of Maryland, said the pressure on Congress to act as a result of terrorist attacks is hard to resist even if a proposed law will not do exactly what is intended. The problem often is not in the official acts of government, but in how authorities interpret them, he said.

“I don't think there will be an official decree that Arab Americans must live west of Pittsburgh. I think we'll see quiet profiling,” he said. “I think Arab Americans will be made to feel uncomfortable.”

Khalil Iqbal, director of operations at the Council on American-Islamic Relations in Washington, said that since the attack, his organization has received dozens of complaints from Muslims in the Washington area who say the FBI has questioned them about their national origin and other information, based on their religion and ethnicity.

“We are loyal to our country,” said Iqbal. “And when our loyalty is questioned by somebody sitting somewhere in the name of fighting terrorism, that is a scary thought.”

His group is recommending that Muslims ask to have their lawyers present for any questioning.

Cole said the government ultimately hurts its investigation when it violates civil liberties.

“We must focus on criminal conduct and not national origin or political associations,” he said. “These are not just the lawful and constitutional ways to proceed, they're the more productive way . . . because otherwise, once an entire community is considered suspect, the law-abiding members of that community are less willing to cooperate with law enforcement.”

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